

REMARKS

The August 12, 2005 Office Action regarding the above-identified application has been carefully considered. The amendments above, the remarks that follow and two concurrently filed declarations are presented in a bona fide effort to respond thereto and address all issues raised in that Action.

The first item (on page 2) of the Detailed Action indicated that the specification was informal because of a numbering error in the original presentation of the claims. As noted, the original application included claims 1-21 and claims 23-46, but claim 22 was omitted. Apparently, the Examiner proposed to renumber original claims 23-46 as claims 22-45. The listing of claims above implements such renumbering. In addition, claim dependencies are amended above to reflect the Examiner's proposed claim renumbering. Except for the numbering changes, there have been no amendments. All claims retain their original scope.

For reasons discussed below, it is believed that this case is in condition for allowance. Prompt favorable reconsideration of this amended application is requested.

The Office Action include a rejection of all of the claims under 35 U.S.C. § 102(e) as anticipated by US patent application publication number 2004/0225878 to Costa-Requena et al. (hereinafter the '878 publication). Under 35 U.S.C. § 102(e), an application publication such as the '878 publication would be effective as "prior" based on its filing date, but only if its filing date is earlier than the date of invention of the subject matter claimed in the present case. The '878 publication was filed on May 5, 2003.

The present application was filed on October 30, 2003, however, the date of invention of the subject matter claimed in the present case is prior to the May 5, 2003 filing date of the '878 publication. Two declarations are submitted herewith under 37 C.F.R. § 1.131 (Rule 131), one

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by inventors Allen Billings and Kent Hughes, the other by Keith E. George of the firm McDermott Will & Emery LLP that prepared and filed the present application, which show Applicants' earlier date of invention and thereby establish that the '878 publication is NOT "prior" art with respect to Applicants' claims.

It is respectfully submitted that the disclosure documentation, represented by Exhibits 1-4 accompanying the inventors Rule 131 declaration and/or Exhibits 3-7 accompanying the George Rule 131 declaration, shows conception of the subject matter claimed herein prior to May 5, 2003. By way of example only, compare the drawing on page 6 of Exhibit 1 accompanying the inventors Rule 131 declaration to drawings such as Figs. 3A to 4B of the application filed on October 30, 2003. As another example, note the HLR shown in the drawing on page 12 of Exhibit 1 accompanying the inventors Rule 131 declaration. The e-mail received by Keith E. George (Exhibit 2 accompanying the George Rule 131 declaration) and the time entry regarding review and consideration of three of the disclosure documents (top of table in Exhibit 1 accompanying the George Rule 131 declaration) corroborate the inventors' conception of at least as much of the subject matter as is described in those three documents (copies of documents in Exhibits 2-4 accompanying the inventors Rule 131 declaration and matching copies in Exhibits 3-5 accompanying the George Rule 131 declaration) prior to May 5, 2003.

Paragraphs 4 and 5 of the inventors Rule 131 declaration and paragraphs 16-19 of the George Rule 131 declaration relate to diligence from a date prior to May 5, 2003 up through the October 30, 2003 filing date of the above-identified application. Exhibits 5-9 accompanying the inventors Rule 131 declaration represent inventor activity in the period from May of 2003 to September 2003. As noted in paragraph 5 of the inventors Rule 131 declaration, the inventors reviewed at least one draft of the application and provided comments in August and September

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of 2003. Also, time entries in Exhibit 1 accompanying the George Rule 131 declaration show ongoing work by the attorneys and interaction with the inventors regarding that application in the May to October 2003 time frame (see also paragraph 19 of the George Rule 131 declaration).

In view of the evidence provided in the two Rule 131 declarations and the Exhibits attached thereto, it should be readily apparent that the inventors conceived of the claimed invention prior to the May 5, 2003 filing date of the '878 publication and that due diligence was exercised from a date prior to May 5, 2003 up to the October 30, 2003 filing date of the present application. Hence, Applicants' have shown a date of invention that is earlier than the May 5, 2003 filing date of the '878 publication, and that publication is not prior art against Applicants' claims under 35 U.S.C. § 102(e). The art rejection therefore should be withdrawn and the claims should be indicated allowable.

Upon entry of the above claim amendments, claims 1-45 remain active in this application, all of which should be novel over the art applied in the Action. Applicants therefore submit that all of the claims are in condition for allowance. Accordingly, this case should now be ready to pass to issue; and Applicants respectfully request a prompt favorable reconsideration of this matter.

It is believed that this response addresses all issues raised in the August 12, 2005 Office Action. However, if any further issue should arise that may be addressed in an interview or by an Examiner's amendment, it is requested that the Examiner telephone Applicants' representative at the number shown below.

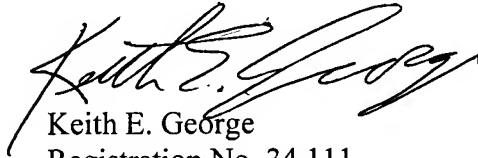
To the extent necessary, if any, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of

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this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

A handwritten signature in black ink, appearing to read "Keith E. George", is written over the printed name.

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